



City of Hampton
PERSONNEL ADMINISTRATIVE PROCEDURES

DATE: November 17, 1995	CHAPTER: 2	PAI No. 1
REFERENCES:	SUBJECT: Substance Abuse Policy	
<p>I. <u>GENERAL:</u> This instruction establishes the guidelines for administering a substance abuse policy designed to promote and maintain the health, safety, and well being of the employees and citizens of Hampton. This policy is designed to encourage and promote an alcohol and drug-free workplace and to provide for employee assistance, supervisory training, employee education and a testing procedure for the identification of the illegal use of drugs and alcohol.</p> <p>II. <u>APPLICABILITY:</u> <i>All employees are prohibited from possessing or using alcohol and illegal drugs in the workplace. Employees are prohibited from operating motor equipment while under the influence of alcohol or illegal drugs. The City also prohibits the manufacture and unauthorized distribution of drugs and alcohol on the job and on city premises.</i></p> <p><i>In compliance with the Drug-Free Workplace Act of 1988 and the Omnibus Transportation Employee Testing Act of 1991, and the rules formulated under these Acts, the City will take positive steps to eliminate any drug and alcohol use and/or being under the influence in the workplace.</i></p> <p>Specifically, the Omnibus Transportation Employee Testing Act of 1991 requires the City to test all employees required to obtain a commercial driver's license (CDL) and who are required to operate commercial motor vehicles for illegal use of alcohol and controlled substances.</p> <p>III. <u>DEFINITIONS:</u></p> <p>A. Adulterated Sample (Specimen) means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.</p> <p>B. Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including, but not limited to, methyl and isopropyl alcohol.</p> <p>C. Under the Influence of Alcohol means having an alcohol concentration of .02 or greater.</p> <p>D. Illegal Drug and Controlled Substance are interchangeable and mean any of the following:</p> <p style="margin-left: 40px;">1. The possession of any drug or controlled substance which is prohibited by law. These illegal drugs include, but are not limited to, marijuana, cocaine, heroin, opiates, phencyclidine (PCP), amphetamines and imitations thereof.</p>		
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2. Any drug or controlled substance which is used in a manner different from that authorized by law.
3. Any drug or controlled substance which is legally obtainable but which has not been legally obtained.

- A. **Commercial Motor Vehicle** means a motor vehicle that has a gross weight rating of 26,001 or more pounds or a vehicle designed to transport 16 or more passengers including the driver, or a vehicle which transports hazardous materials that are required to be placarded.
- B. **Driver** means any person who operates a commercial motor vehicle, including, but not limited to, full-time, part-time, WAE, voluntary, intermittent and occasional drivers, and for the purposes of pre-employment testing, persons applying for positions requiring a CDL.
- C. **Medical Review Officer (MRO)** means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program. The MRO shall possess knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history and any other relevant biomedical information.
- D. **Performing a Safety-Sensitive Function** means commercial drivers or other designated personnel are actually performing, ready to perform or immediately available to perform any safety-sensitive function.
- E. **Reasonable Suspicion** means an articulable belief based on specific facts, and reasonable inferences drawn from those facts, that an employee is under the influence of drugs or alcohol.
- F. **Substance Abuse Professional** means a licensed Physician (Medical Doctor or Doctor of Osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

- IV. **TRAINING AND EDUCATION:** The City shall provide all supervisory personnel designated to determine whether reasonable suspicion exists with at least 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substances use which includes information on the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. In addition, each employee assigned to a safety sensitive position shall receive printed education materials that explain the City's substance

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abuse policies and testing requirements. Each employee assigned to a safety sensitive position who receives the education materials will be required to sign an acknowledgement form indicating that he/she has received the information and that he/she agrees to abide by the regulations contained therein.

V. TYPES OF TESTING: There are six types of tests: **Pre-Employment, Reasonable Suspicion, Random, Post-Accident, Return-to-Duty, and Follow-up.** Detailed information about each type of test is as follows:

A. Pre-Employment: All persons offered employment *in a safety sensitive position* with the city shall be required to undergo testing for controlled substances. Those who test positive and those who refuse to be tested shall be denied employment. *Current employees selected for safety sensitive positions will be subject to pre-employment testing. Persons employed in any position category listed below shall not be allowed to perform safety sensitive function without receipt of a negative test result.*

1. *Employees who operate a commercial motor vehicle owned or leased by the city and who are subject to the commercial driver's license requirements;*
2. *Employees who will be driving, on a regular basis, motor vehicles and motorized equipment (excluding occasional users of automobiles and light trucks), including, but not limited to, trucks, tractors, backhoes, etc., and all employees involved in the repair and maintenance of motor vehicles and equipment owned and operated by the city;*
3. *Uniformed police employees, police cadets, auxiliary police officers, public safety dispatchers;*
4. *Uniformed fire and rescue division employees and volunteers engaged in fire suppression or emergency medical service delivery;*
5. *Safety-sensitive positions identified in writing by both the Director of Human Resources and the Risk Manager.*

All persons offered employment in a safety sensitive position shall be asked if they have tested positive or refused to test during the past two (2) years on any pre-employment drug or alcohol test administered by an employer to which the applicant applied, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules.

If the applicant admits that he/she had a positive test or a refusal to test, the applicant shall not be employed and allowed to perform safety-sensitive functions until the applicant or their former employer provides documentation of successful completion of the return-to-duty process.

B. Reasonable Suspicion: *"Reasonable suspicion" means an articulable belief based on specific facts, and reasonable inferences drawn from those facts, that an employee is under the influence of drugs or alcohol. Circumstances which constitute a basis for determining "reasonable suspicion" may include, but are not limited to:*

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1. *A pattern of abnormal or erratic behavior (e.g., hyperactivity, unexplained mood swings, paranoia, hallucinations);*
2. *Information provided by a reliable and credible source;*
3. *A work-related accident;*
4. *Direct observation of drug or alcohol use;*
5. *Possession of drugs or drug paraphernalia; or*

Presence of the physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor or breath, slurred speech, poor coordination, and/or reflexes, needle marks/scar tracks on arms, etc, onset or unusual perspiration or shakes, unusual drowsiness or sluggishness).

Supervisors at every level are responsible for observing and monitoring their employees' behavior for signs or symptoms of drug or alcohol use, and shall promptly report any such observations to the appropriate department head or designee in accordance with the following requirements:

1. *When reasonable suspicion is based on personal observation alone, prior to the administration of a drug or alcohol test, the behavior of the affected employee should be observed by at least two supervisory personnel. These two supervisors should concur on the need for a test. In the event that two supervisors are unavailable, the observation of one supervisor shall suffice. However, documentation should be submitted to the department head verifying the unavailability of an additional supervisory person to concur with the need for the administration of a test.*
2. *The supervisors shall report to the department head or designee the specific facts, symptoms, or observations which form the basis for a belief that reasonable suspicion exists to warrant the testing of an employee, and shall obtain approval from the department head or designee prior to ordering an employee to submit to testing. Department heads will designate a sufficient number of supervisory personnel with approval authority to ensure that someone will be available to grant approval at all times.*
3. *If the circumstances support a need for reasonable suspicion testing, the department head or supervisor shall notify the Department of Human Resources to coordinate the appropriate testing.*
4. *The supervisor shall arrange to have the employee transported to the city's designated collection site for appropriate testing.*

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5. *Supervisors shall document in writing the specific facts, symptoms, or observations justifying a determination of reasonable suspicion as soon as reasonably practicable, which may be either before or after the testing occurs.*

C. Random: Since January 1, 1998, a minimum of ten percent (10%) of the number of employees who operate a commercial motor vehicle owned or leased by the city and who are subject to the commercial driver's license requirements have been randomly tested for alcohol, and a minimum of fifty percent (50%) of those same employees have been randomly tested for controlled substances each calendar year.

1. The random alcohol and/or controlled substances tests conducted under this section shall be unannounced and the dates shall be spread reasonably throughout the calendar year.
2. Each employee who is notified of selection for random alcohol and/or controlled substances testing will proceed to the test site immediately and follow established procedures for testing.
3. An employee shall only be tested for alcohol and controlled substances:

While the employee is performing safety-sensitive functions;

Just before the employee is to perform safety-sensitive functions; or

Just after the employee has ceased performing safety-sensitive functions.

4. An employee shall not be permitted to perform safety-sensitive functions for a minimum of twenty-four (24) hours following the administration of a random alcohol test, if such test results indicate an alcohol content of 0.02 or greater. An employee with a test result of 0.04 or greater shall be considered in violation of this policy and shall be *dismissed*. An employee with a *first offense alcohol test result of .02 to .039* shall not be allowed to return to work until he/she can provide *an alcohol test result of less than .02*.

D. Post Accident: For the purpose of this policy "accident" is defined as follows: An occurrence involving a motor vehicle operating on a public road, private road, or on city property which results in:

- a. *A loss of human life; or*
- b. Bodily injury to a person *requiring immediate* medical treatment away from the scene of the accident; or
- c. *Damage to or Disability of one or more vehicles requiring that the vehicle(s) be transported away from the scene of the accident away from the scene of the*

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accident by a tow truck or other vehicle.

1. As soon as practicable following an accident, the city shall test for alcohol and controlled substances each surviving driver:
 - a. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved loss of human life; or
 - b. Who receives a citation for a moving traffic violation arising from the accident *that involved:*
 - 1) *Injury requiring medical treatment away from the scene, or*
 - 2) *One or more vehicles having to be towed from the scene.*
2. *The testing of drivers following an accident in which there is no personal injury, vehicles towed or citations issued may be administered by on-site police or public safety officials if there is reasonable suspicion that the driver is under the influence of alcohol or controlled substances. This type of testing may be particularly useful if that test can be administered before the supervisor can get to the scene. The supervisor must obtain a copy of the test results.*
3. Time limits for testing and appropriate record-keeping:
 - a. Alcohol Testing: If a test is not administered within two (2) hours following the accident, the supervisor shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within eight (8) hours following the accident, the supervisor shall cease attempts to administer an alcohol test and shall prepare and maintain the same record.
 - b. Controlled Substance Testing: If the required testing is not administered within thirty-two (32) hours following the accident, the supervisor shall cease attempts to administer a controlled substance test and shall prepare and maintain a record stating the reasons the test was not promptly administered
 - c. *Supervisory personnel need to maintain copies of this documentation in their departments in a medical file which is separate from other personnel related documents.*

E. Return-To-Duty:

1. *All employees who have received first offense alcohol test results of .02 - .039, must undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02.*

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2. *All employees who have been referred to a substance abuse professional as a result of an independent admission of an alcohol or controlled substance problem shall be subject to return-to-duty testing and must provide a test result of less than .02 for alcohol and/or a negative controlled substance test result.*

F. Follow-Up: *Employees who independently admit to alcohol or controlled substance problem and have been referred to a substance abuse professional shall be subject to follow-up testing. Following a determination by a substance abuse professional that an employee is in need of assistance in resolving problems associated with alcohol misuse and/or controlled substances, the employee shall be subject to unannounced follow-up alcohol and/or controlled substance testing for up to twenty-four (24) months as directed by a substance abuse professional following the employee's return-to-duty.*

In addition, federal law mandates the following requirements for drivers of commercial vehicles:

1. Follow-up testing shall be conducted just before, during, or just after the driver performs safety-sensitive functions.
2. The number and frequency of testing shall be as directed by the substance abuse professional, and consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. The employee shall be subject to unannounced follow-up alcohol and/or controlled substance testing for up to sixty (60) months from the date of the driver's return to duty.
3. The substance abuse professional may terminate the requirement for follow-up testing at any time after the six (6) tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

VI. COLLECTION AND TESTING PROCEDURES:

A. Controlled Substances Testing:

The *City* requires a strict collection and testing protocol, *which includes, but is not limited to the* following controlled substances: Marijuana, Cocaine, Opiates, Amphetamines, and Phencyclidines (PCP). Urine samples are collected in a controlled environment at preassigned collection sites under strict chain of custody conditions. Privacy is assured unless reasonable cause exists that specimens have been tampered with.

Only certified laboratories are used for specimen testing to assure accuracy. If a urine sample tests positive, the laboratory automatically performs a second "state of the art" procedure, to again assure accuracy of the testing result. The result is then communicated to a Medical Review Officer (MRO) who is a licensed physician knowledgeable in prescription and over the counter medications.

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The employee has the opportunity to discuss the positive result with the MRO. The employee will be advised that the split sample of the original urine specimen, can be tested at another laboratory if the MRO has been asked by the employee to do so within 72 hours of having been notified. The requesting employee will be *asked to reimburse the City* for all costs associated with the follow up testing of the split sample of the original urine specimen.

B. Alcohol Testing Procedure:

Alcohol testing is done with an approved Breath Alcohol device called an Evidential Breath Testing Device (EBT), a scientific instrument which determines the concentration of alcohol expressed as percent by weight. Alcohol testing is performed by a certified Breath Alcohol Technician (BAT) who has undergone extensive training.

A Chain of Custody form will be used to document the breath alcohol collection. The employee will be required to sign this form and will be given a copy.

VII. HANDLING SUSPECTED VIOLATIONS:

A. Supervisory Responsibility: Department heads and/or supervisors shall discuss any case of suspected violation of this policy with the Director of Human Resources or his/her designee as soon as practical. Department heads and supervisors are responsible for identifying and documenting instances of unacceptable work performance, patterns of inadequate or deteriorating work performance, and abnormal behavior which suggests that an employee may have an alcohol or controlled substance problem. Department heads and/or supervisors who fail to take appropriate action to detect and/or properly deal with substance abuse by employees under their supervision will themselves be subject to disciplinary action, up to and including dismissal.

B. Employee Responsibility: Employees who have a substance abuse problem are encouraged to seek assistance and are at liberty to do so through the city's Employee Assistance Program (EAP) or a provider of their choice. However, an employee whose substance abuse problem or impairment poses risk of harm or damage to himself/herself, fellow employees, the public, or city or private property, is obligated to notify his/her supervisor immediately. Employees whose positions have been designated as safety-sensitive shall be relieved from duty until it is medically certified that they are fit to return to duty, regardless of whether they have sought or are receiving assistance for a substance abuse problem.

C. Personnel Actions: Violations of this policy related to alcohol or controlled substances are covered by the disciplinary policies contained in Chapter II of the Personnel Policies Manual.

1. An employee with a positive test result for controlled substances and/or an alcohol test result of .04 or greater will be dismissed.

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2. *An employee with a first offense alcohol test result of .02 - .039 and no other infractions of misconduct may, at the discretion of the department head, be handled as a medical matter if the employee has an overall satisfactory record of job performance and conduct. In cases which are handled as medical matters, the employee shall be referred to a substance abuse professional for counseling and shall be subject to return-to-duty testing and not allowed to return to work until he/she can provide a test result of less than .02.*
3. If an employee independently admits to an alcohol or controlled substance problem *at a time other than when he/she has been directed to test* and there have been no related misconduct or job performance problems, the employee shall be referred to a substance abuse professional.
4. If an employee refuses or fails to submit to an alcohol or controlled substance test required under this policy, the employee *will be dismissed*. In cases of reasonable suspicion, refusal to consent to a test shall be used as supporting evidence for disciplinary action.
5. Any refusal or failure to cooperate fully in alcohol or controlled substance testing, any behavior which makes testing more difficult, or any action to alter or attempt to alter the test will result in dismissal.
6. *If an employee receives an adulterated sample (specimen) test result, this will be considered a refusal to test and the employee will be dismissed.*
7. When referral is made to a substance abuse professional and the employee does not satisfactorily participate in the recommended treatment, does not cooperate or does not successfully complete the treatment, the employee *will be dismissed*.
8. If an employee is referred to the substance abuse professional and the conduct or performance problems continue, appropriate personnel action may be taken.
9. Off-the-Job Misconduct: An employee may be subject to disciplinary action up to and including dismissal if the employee commits off-the-job misconduct associated with alcohol or controlled substance use which affects the employee's effectiveness, credibility or ability to fully carry out the responsibilities of the position held *and is considered conduct unbecoming to a city employee which adversely reflects on the City*. Such cases will be handled on a case by case basis. The employee may be subject to periodic unannounced follow-up testing and may be referred to a substance abuse professional.

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G. Referral, Evaluation and Treatment:

1. Referral for evaluation and possible treatment does not circumvent disciplinary action for violations of this policy. Employees suspected of violating this policy, provided they are not being dismissed from employment, shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs to resolve his/her alcohol/controlled substance related problem. This *may* be provided through the city's Employee Assistance Program (EAP) *or a provider selected by the employee.*
2. Employees who are dismissed as a result of violating this policy shall be provided with a list of community resources available to them for evaluation and resolution of problems associated with the misuse of alcohol and/or controlled substance abuse.
3. This referral process shall not apply to applicants for employment who refuse to submit to a pre-employment controlled substance test or who have a positive pre-employment test for controlled substances.

H. Re-employment of Former Employees and Employment of Persons with a Record of the Illegal Use of a Controlled Substance

1. *Former employees who were in violation of this policy and who subsequently were dismissed from employment and applicants who have a record of the illegal use of a controlled substance may be eligible for consideration for future employment in accordance with regular City recruitment and selection policies if the applicant presents:*

- *A statement from a qualified substance abuse professional or medical professional qualified to treat substance abuse that the former employee or applicant has successfully completed a rehabilitation program; and*
- *Some evidence that the former employee or applicant has not used controlled substances for the preceding twelve (12) months. This evidence may be in the form of rehabilitation program reports, support group attendance reports, controlled substance test reports, successful job performance, conduct and attendance in other employment or other related documentation.*

This policy does not require the City to give the former employee or applicant any preference in hiring decisions nor does it require that the former employee be rehired.

I. Criminal Convictions: Notification

It shall be the responsibility of every employee to notify the employee's department head, in writing, of any criminal drug or alcohol statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction. Any employee who fails to comply with this requirement shall be subject to disciplinary action

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1. *Any department head who receives notification of a criminal drug or alcohol statute conviction for a violation occurring in the workplace shall immediately report the same to the Director of Human Resources who shall determine whether the employee involved was directly engaged in the performance of work pursuant to the provisions of a Federal grant. In such event, the Director of Human Resources shall promptly notify the Federal agency administering the grant of the conviction.*

J. Searches

The City reserves the right to conduct investigatory searches, without employee consent, of all areas and property over which the City maintains joint control with an employee, or full control. Such areas and property include, but are not limited to desks, closets, bookcases, lockers, file cabinets, city vehicles and/or private vehicles used in conducting City business. Where feasible, investigatory searches should be approved in advance by the Department of Human Resources.

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